

(ii) Under paragraph (c)(2) of this section, beginning in 2009, *FT* is not treated as having a U.S. beneficiary, and *A* is not treated as the owner of the portion of the trust attributable to the prior transfer of stock. For rules regarding the recognition of gain on the termination of ownership status, see section 684.

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**§ 1.679-3 Transfers.**

(a) *In general.* A transfer means a direct, indirect, or constructive transfer.

(b) *Transfers by certain trusts—(1) In general.* If any portion of a trust is treated as owned by a U.S. person, a transfer of property from that portion of the trust to a foreign trust is treated as a transfer from the owner of that portion to the foreign trust.

(2) *Example.* The following example illustrates this paragraph (b):

*Example.* In 2001, *A*, a U.S. citizen, creates and funds *DT*, a domestic trust. *A* has the power to revest absolutely in himself the title to the property in *DT* and is treated as the owner of *DT* pursuant to section 676. In 2004, *DT* transfers property to *FT*, a foreign trust. *A* is treated as having transferred the property to *FT* in 2004 for purposes of this section.

(c) *Indirect transfers—(1) Principal purpose of tax avoidance.* A transfer to a foreign trust by any person (intermediary) to whom a U.S. person transfers property is treated as an indirect transfer by a U.S. person to the foreign trust if such transfer is made pursuant to a plan one of the principal purposes of which is the avoidance of United States tax.

(2) *Principal purpose of tax avoidance deemed to exist.* For purposes of paragraph (c)(1) of this section, a transfer is deemed to have been made pursuant to a plan one of the principal purposes of which was the avoidance of United States tax if—

(i) The U.S. person is related (within the meaning of paragraph (c)(4) of this section) to a beneficiary of the foreign trust, or has another relationship with a beneficiary of the foreign trust that establishes a reasonable basis for concluding that the U.S. transferor would make a transfer to the foreign trust; and

(ii) The U.S. person cannot demonstrate to the satisfaction of the Commissioner that—

(A) The intermediary has a relationship with a beneficiary of the foreign trust that establishes a reasonable basis for concluding that the intermediary would make a transfer to the foreign trust;

(B) The intermediary acted independently of the U.S. person;

(C) The intermediary is not an agent of the U.S. person under generally applicable United States agency principles; and

(D) The intermediary timely complied with the reporting requirements of section 6048, if applicable.

(3) *Effect of disregarding intermediary—*

(i) *In general.* Except as provided in paragraph (c)(3)(ii) of this section, if a transfer is treated as an indirect transfer pursuant to paragraph (c)(1) of this section, then the intermediary is treated as an agent of the U.S. person, and the property is treated as transferred to the foreign trust by the U.S. person in the year the property is transferred, or made available, by the intermediary to the foreign trust. The fair market value of the property transferred is determined as of the date of the transfer by the intermediary to the foreign trust.

(ii) *Special rule.* If the Commissioner determines, or if the taxpayer can demonstrate to the satisfaction of the Commissioner, that the intermediary is an agent of the foreign trust under generally applicable United States agency principles, the property will be treated as transferred to the foreign trust in the year the U.S. person transfers the property to the intermediary. The fair market value of the property transferred will be determined as of the date of the transfer by the U.S. person to the intermediary.

(iii) *Effect on intermediary.* If a transfer of property is treated as an indirect transfer under paragraph (c)(1) of this section, the intermediary is not treated as having transferred the property to the foreign trust.

(4) *Related parties.* For purposes of this paragraph (c), a U.S. transferor is treated as related to a U.S. beneficiary of a foreign trust if the U.S. transferor and the beneficiary are related for purposes of section 643(i)(2)(B), with the following modifications—

(i) For purposes of applying section 267 (other than section 267(f)) and section 707(b)(1), “at least 10 percent” is used instead of “more than 50 percent” each place it appears; and

(ii) The principles of section 267(b)(10), using “at least 10 percent” instead of “more than 50 percent,” apply to determine whether two corporations are related.

(5) *Examples.* The rules of this paragraph (c) are illustrated by the following examples:

*Example 1. Principal purpose of tax avoidance.* A, a U.S. citizen, creates and funds FT, a foreign trust, for the benefit of A’s children, who are U.S. citizens. In 2004, A decides to transfer an additional 1000X to the foreign trust. Pursuant to a plan with a principal purpose of avoiding the application of section 679, A transfers 1000X to I, a foreign person. I subsequently transfers 1000X to FT. Under paragraph (c)(1) of this section, A is treated as having made a transfer of 1000X to FT.

*Example 2. U.S. person unable to demonstrate that intermediary acted independently.* A, a U.S. citizen, creates and funds FT, a foreign trust, for the benefit of A’s children, who are U.S. citizens. On July 1, 2004, A transfers XYZ stock to D, A’s uncle, who is a non-resident alien. D immediately sells the XYZ stock and uses the proceeds to purchase ABC stock. On January 1, 2007, D transfers the ABC stock to FT. A is unable to demonstrate to the satisfaction of the Commissioner, pursuant to paragraph (c)(2) of this section, that D acted independently of A in making the transfer to FT. Under paragraph (c)(1) of this section, A is treated as having transferred the ABC stock to FT. Under paragraph (c)(3) of this section, D is treated as an agent of A, and the transfer is deemed to have been made on January 1, 2007.

*Example 3. Indirect loan to foreign trust.* A, a U.S. citizen, previously created and funded FT, a foreign trust, for the benefit of A’s children, who are U.S. citizens. On July 1, 2004, A deposits 500X with FB, a foreign bank. On January 1, 2005, FB loans 450X to FT. A is unable to demonstrate to the satisfaction of the Commissioner, pursuant to paragraph (c)(2) of this section, that FB has a relationship with FT that establishes a reasonable basis for concluding that FB would make a loan to FT or that FB acted independently of A in making the loan. Under paragraph (c)(1) of this section, A is deemed to have transferred 450X directly to FT on January 1, 2005. Under paragraph (c)(3) of this section, FB is treated as an agent of A. For possible exceptions with respect to qualified obligations of the trust, and the treatment of principal repayments with respect to obligations of the

trust that are not qualified obligations, see § 1.679-4.

*Example 4. Loan to foreign trust prior to deposit of funds in foreign bank.* The facts are the same as in *Example 3*, except that A makes the 500X deposit with FB on January 2, 2005, the day after FB makes the loan to FT. The result is the same as in *Example 3*.

(d) *Constructive transfers*—(1) *In general.* For purposes of paragraph (a) of this section, a constructive transfer includes any assumption or satisfaction of a foreign trust’s obligation to a third party.

(2) *Examples.* The rules of this paragraph (d) are illustrated by the following examples. In each example, A is a U.S. citizen and FT is a foreign trust. The examples are as follows:

*Example 1. Payment of debt of foreign trust.* FT owes 1000X to Y, an unrelated foreign corporation, for the performance of services by Y for FT. In satisfaction of FT’s liability to Y, A transfers to Y property with a fair market value of 1000X. Under paragraph (d)(1) of this section, A is treated as having made a constructive transfer of the property to FT.

*Example 2. Assumption of liability of foreign trust.* FT owes 1000X to Y, an unrelated foreign corporation, for the performance of services by Y for FT. A assumes FT’s liability to pay Y. Under paragraph (d)(1) of this section, A is treated as having made a constructive transfer of property with a fair market value of 1000X to FT.

(e) *Guarantee of trust obligations*—(1) *In general.* If a foreign trust borrows money or other property from any person who is not a related person (within the meaning of § 1.679-1(c)(5)) with respect to the trust (lender) and a U.S. person (U.S. guarantor) that is a related person with respect to the trust guarantees (within the meaning of paragraph (e)(4) of this section) the foreign trust’s obligation, the U.S. guarantor is treated for purposes of this section as a U.S. transferor that has made a transfer to the trust on the date of the guarantee in an amount determined under paragraph (e)(2) of this section. To the extent this paragraph causes the U.S. guarantor to be treated as having made a transfer to the trust, a lender that is a U.S. person shall not be treated as having transferred that amount to the foreign trust.

(2) *Amount transferred.* The amount deemed transferred by a U.S. guarantor described in paragraph (e)(1) of this

section is the guaranteed portion of the adjusted issue price of the obligation (within the meaning of §1.1275-1(b)) plus any accrued but unpaid qualified stated interest (within the meaning of §1.1273-1(c)).

(3) *Principal repayments.* If a U.S. person is treated under this paragraph (e) as having made a transfer by reason of the guarantee of an obligation, payments of principal to the lender by the foreign trust with respect to the obligation are taken into account on and after the date of the payment in determining the portion of the trust attributable to the property deemed transferred by the U.S. guarantor.

(4) *Guarantee.* For purposes of this section, the term guarantee—

(i) Includes any arrangement under which a person, directly or indirectly, assures, on a conditional or unconditional basis, the payment of another's obligation;

(ii) Encompasses any form of credit support, and includes a commitment to make a capital contribution to the debtor or otherwise maintain its financial viability; and

(iii) Includes an arrangement reflected in a comfort letter, regardless of whether the arrangement gives rise to a legally enforceable obligation. If an arrangement is contingent upon the occurrence of an event, in determining whether the arrangement is a guarantee, it is assumed that the event has occurred.

(5) *Examples.* The rules of this paragraph (e) are illustrated by the following examples. In all of the examples, A is a U.S. resident and FT is a foreign trust. The examples are as follows:

*Example 1. Foreign lender.* X, a foreign corporation, loans 1000X of cash to FT in exchange for FT's obligation to repay the loan. A guarantees the repayment of 600X of FT's obligation. Under paragraph (e)(2) of this section, A is treated as having transferred 600X to FT.

*Example 2. Unrelated U.S. lender.* The facts are the same as in Example 1, except X is a U.S. person that is not a related person within the meaning of §1.679-1(c)(5). The result is the same as in Example 1.

(f) *Transfers to entities owned by a foreign trust—(1) General rule.* If a U.S. person is a related person (as defined in §1.679-1(c)(5)) with respect to a foreign

trust, any transfer of property by the U.S. person to an entity in which the foreign trust holds an ownership interest is treated as a transfer of such property by the U.S. person to the foreign trust followed by a transfer of the property from the foreign trust to the entity owned by the foreign trust, unless the U.S. person demonstrates to the satisfaction of the Commissioner that the transfer to the entity is properly attributable to the U.S. person's ownership interest in the entity.

(2) *Examples.* The rules of this paragraph (f) are illustrated by the following examples. In all of the examples, A is a U.S. citizen, FT is a foreign trust, and FC is a foreign corporation. The examples are as follows:

*Example 1. Transfer treated as transfer to trust.* A creates and funds FT, which is treated as having a U.S. beneficiary under §1.679-2. FT owns all of the outstanding stock of FC. A transfers property directly to FC. Because FT is the sole shareholder of FC, A is unable to demonstrate to the satisfaction of the Commissioner that the transfer is properly attributable to A's ownership interest in FC. Accordingly, under this paragraph (f), A is treated as having transferred the property to FT, followed by a transfer of such property by FT to FC. Under §1.679-1(a), A is treated as the owner of the portion of FT attributable to the property treated as transferred directly to FT. Under §1.367(a)-1T(c)(4)(ii), the transfer of property by FT to FC is treated as a transfer of the property by A to FC.

*Example 2. Transfer treated as transfer to trust.* The facts are the same as in Example 1, except that FT is not treated as having a U.S. beneficiary under §1.679-2. Under this paragraph (f), A is treated as having transferred the property to FT, followed by a transfer of such property by FT to FC. A is not treated as the owner of FT for purposes of §1.679-1(a). For rules regarding the recognition of gain on the transfer, see section 684.

*Example 3. Transfer not treated as transfer to trust.* A creates and funds FT. FC has outstanding solely 100 shares of common stock. FT owns 50 shares of FC stock, and A owns the remaining 50 shares. On July 1, 2001, FT and A each transfer 1000X to FC. A is able to demonstrate to the satisfaction of the Commissioner that A's transfer to FC is properly attributable to A's ownership interest in FC. Accordingly, under this paragraph (f), A's transfer to FC is not treated as a transfer to FT.

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